

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,

f/k/a General Motors Corp., et al.,

Debtors.

U.S. Bankruptcy Court

One Bowling Green

New York, New York

October 28, 2009

9:50 AM

B E F O R E :

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

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2 Hearing re: Application for an Order Pursuant to Sections
3 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rule
4 2014(a) Authorizing the Employment and Retention of Evercore
5 Group L.L.C. as Investment Banker and Financial Advisor for the
6 Debtors Nunc Pro Tunc to the Petition Date

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Transcribed By: Hana Copperman

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P R O C E E D I N G S

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THE COURT: GM. I think I know everybody. I'm not
going to take up the time for appearances. Mr. Karotkin,
you're going to take the lead?

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MR. KAROTKIN: Yes, sir.

6

THE COURT: Good.

7

MR. KAROTKIN: Good morning, sir. Stephen Karotkin,
Weil, Gotshal & Manges, for Motors Liquidation Company and its
affiliated debtors. Your Honor, there's only one matter on the
calendar this morning, and that is the adjourned hearing with
respect to the debtors' application to retain and employ
Evercore Group as investment banker and financial advisor.

13

Originally, Your Honor, there were four objections
filed to the application, one of which has since been
withdrawn. And, as the Court is aware, this matter has been
adjourned from time to time, during which period, Your Honor,
the debtors have had various meetings with the representatives
of the unsecured creditors' committee, as well as with the
Office of the United States Trustee, in an effort to resolve
the objections which they asserted.

21

I'm pleased to say, Your Honor, that these efforts
have resulted in a resolution of the objections, which have
been embodied in a proposed order which we have filed and which
has been consented to by all of the objecting parties. And on
October 8th, Your Honor, we served a notice of the proposed

1 order, the resolution, and that a hearing would be held today
2 before Your Honor to consider that proposed order and the
3 resolution of the objections. And a copy of the proposed
4 order, Your Honor, was served on all interested parties
5 together with that notice, and, as I mentioned, notice of the
6 hearing to be held today.

7 The proposed order is self-explanatory, but if you
8 would like I can quickly summarize the pertinent provisions for
9 the record.

10 THE COURT: Please do that.

11 MR. KAROTKIN: First, Your Honor, the retention of
12 Evercore is authorized as of the date of the commencement of
13 these cases, which was June 1, 2009. And notwithstanding the
14 terms of compensation set forth in Evercore's retention letter,
15 what is called the 363 transaction fee as defined in the
16 application and their retention, payable to Evercore, shall be
17 paid in accordance with the terms set forth in the order rather
18 than in the terms of the engagement letter. And that is, Your
19 Honor, that two thirds of that amount or 8,667,000 dollars
20 would be payable on entry of the proposed order, with the
21 balance of 4.33 million dollars payable on confirmation of a
22 plan of reorganization in the Chapter 11 case of Motors
23 Liquidation Company, which plan provides that holders of
24 allowed unsecured claims will receive the stock and warrants of
25 New General Motors, New GM, paid in connection with the 363

1 sale, and further provides, Your Honor, that there are
2 sufficient assets to pay allowed administrative and priority
3 claims under the plan without the necessity of selling or
4 affecting the stock and warrants which would otherwise be
5 distributable to the unsecured creditors. The obvious intent
6 being, Your Honor, that the balance would not be payable unless
7 it was clear that the stock and warrants would not have to be
8 invaded to pay that amount.

9 Evercore, the order further provides, shall be paid
10 its debtor-in-possession structuring fee and monthly retention
11 fees, aggregating approximately, for both of those items,
12 3,329,000 dollars (3.3 million 29,000 dollars), and that would
13 be paid on entry of the proposed order. And the order also
14 expressly states that the U.S. Trustee retains all rights to
15 object to Evercore's final fee application on all grounds,
16 including the reasonableness standard set forth in Section 330
17 of the Bankruptcy Code, notwithstanding, Your Honor, that the
18 retention is under Section 328(a).

19 As I stated, the order has been signed off on by both
20 the Office of the United States Trustee, by the unsecured
21 creditors' committee's counsel, and the other objecting party,
22 Your Honor, the ad hoc committee of personal injury claimants,
23 also has agreed to the express terms set forth in the proposed
24 order which we have filed.

25 I would like to note for the record, Your Honor,

1 unless you have any other questions, I'd just like to briefly
2 summarize the services rendered by Evercore.

3 THE COURT: Continue, please, Mr. Karotkin.

4 MR. KAROTKIN: Thank you, sir. There were a number of
5 critical services that were performed by Evercore over the
6 period that Evercore was retained by the debtors, which we
7 believe justifies the compensation set forth in the proposed
8 order. The 363 transaction, Your Honor, which, as you yourself
9 noted, was key to preserving value for these estates and the
10 enterprise and for the communities in which General Motors
11 operated, was really the culmination of a twelve month effort.
12 It was not something that occurred in two months. It, really,
13 the process began back a year before the filing of the Chapter
14 11 cases, in June of 2008, when Evercore was first retained.
15 So the retention of Evercore really did last over an entire
16 period of a year, commencing in June, 2008, at which time
17 Evercore dedicated a substantial core group of professionals to
18 the exercising -- in fact, over the twelve month period twelve
19 senior professionals at Evercore devoted virtually all of their
20 time to representing the interests of the debtors in connection
21 with their various efforts at restructuring, trying to find new
22 capital, determining whether there were other strategic
23 transactions, advising the board, interfacing with the
24 government and really engaging in many other activities on
25 behalf of the debtors.

1 I will say, Your Honor, that when Evercore first
2 started its engagement it did a comprehensive analysis of the
3 debtors' financial condition, its capital structure and its
4 strategic alternatives, and, beginning in June of 2008 when the
5 retention ensued, Evercore initially advised the debtors on
6 their liquidity situation, the seriousness of that situation,
7 and the potential access to the public markets, at that time,
8 to address that situation, which, of course, was not available.

9 In July, 2008, Your Honor, Evercore explored with the
10 debtors the potential of doing a secured financing transaction,
11 analyzed the capital structure, what would be available to
12 pledge as collateral in connection with that type of
13 transaction and what could support that type of financing, and,
14 of course, reached the conclusion that that alternative was not
15 available in sufficient amount to generate the capital and
16 financing necessary to support the company going forward.

17 In the fall of 2008, Your Honor, Evercore played a key
18 role in managing the process as to whether there could be a
19 potential M&A transaction with either Chrysler or another OEM,
20 an original equipment manufacturer, in evaluating other
21 strategic alternatives. And, of course, as you know, none of
22 those potential transactions was able to be effected within the
23 time period necessary.

24 Also beginning in the fall of 2008 Evercore played a
25 critical role on behalf of the company in interfacing with the

1 federal government. Evercore had a vital role in the
2 submissions to the government of what were known as the
3 viability plans and was critical, Your Honor, in the ability of
4 the debtors in December of 2008 to secure approximately 13.4
5 billion dollars in a bridge loan when the debtors were
6 virtually out of cash. That financing was by no means assured.
7 It was not a fait accompli. And securing that financing, in
8 which Evercore played a critical role, was key to enabling the
9 company to survive past December 31, 2008 into 2009, and,
10 really, bridge to what ultimately came to the 363 transaction
11 approved in early July of this year.

12 In fact, Evercore's financial model, which it helped
13 General Motors develop, update, bring into the twentieth
14 century, was really the foundation for all of the viability
15 plans moving forward with the government and the projections
16 that were the foundation for all of the financial analysis that
17 was done in 2008 and 2009 and, again, which was instrumental in
18 achieving this 363 transaction, sizing the loan, sizing the DIP
19 loan as well as the other TARP loans that were made in 2008.

20 During the first three or four months of 2009 Evercore
21 had an expanded role in the review and submission of the
22 viability plans to the U.S. Treasury and advised the company on
23 the structuring, the negotiation and documentation of the
24 exchange offer which was made to the bondholders in April and
25 May of 2009. And in addition to that, Your Honor, as you may

1 recall there was an ad hoc committee of bondholders that formed
2 in connection with the restructuring of General Motors which
3 retained its own professionals, including the Paul, Weiss firm
4 as well as Houlihan Lokey. Evercore interfaced with the
5 Houlihan firm, updating them on the financial condition of the
6 company, providing them with the information necessary to help
7 the bondholders make their own analysis of what was appropriate
8 for the restructuring of this company, and, ultimately, working
9 with Houlihan and providing them the analysis and information
10 which led to Houlihan and that ad hoc committee reaching a
11 consensus with both the company and the United States
12 government which led to the successful 363 transaction. And
13 Evercore was key and critical in that due diligence effort
14 which enabled and helped the ad hoc committee of bondholders
15 reach the conclusion which facilitated the 363 sale.

16 I would also add that during this period Evercore
17 again played a critical role with respect to the debtors'
18 operations in Canada and the other international operations,
19 both in Europe as well as in Asia and the Pacific region.
20 Again, dealing with the issues that arose in connection with
21 the same type of financial problems that they had and, more
22 importantly, Your Honor, dealing with the United States
23 government in helping them analyze those issues, understand the
24 operations in Europe and Asia and understanding the importance
25 of those operations to the viability of the United States

1 operations in terms of the technological support that came from
2 overseas and why it was critical to sustain those operations as
3 well.

4 Evercore advised the board of directors of General
5 Motors on a regular basis during the entire process with
6 respect to various strategic alternatives, what could be
7 achievable, what could not be achievable, and, of course, as
8 Your Honor well knows, provided the board with a fairness
9 opinion with respect to the 363 transaction, enabling and
10 helping them to reach the decisions that they did in approving
11 the transaction and preserving the value for the various
12 stakeholders in this case.

13 Your Honor also, I am sure, recalls that Evercore
14 testified at the 363 hearing with respect to those activities
15 as well as its activities in connection with seeking debtor-in-
16 possession financing, sizing the debtor-in-possession
17 financing, formulating the terms, and dealing with the United
18 States government on the budget for that financing, the size of
19 that financing and also negotiating with the company the terms
20 and provisions of that financing.

21 Despite what a lot of people think, Your Honor, the
22 363 transaction with the government was not a foregone
23 conclusion either in the spring of 2009 or when this company
24 had entered Chapter 11 on June 1st of 2009. An enormous amount
25 of work was done in the months preceding the commencement of

1 these cases to help the government understand the business,
2 understand the operations, understand the financial condition
3 and the financial need. The government, like any other
4 purchaser, has to do due diligence in connection with this
5 proposed transaction to purchase the enterprise of General
6 Motors. And, more importantly, Your Honor, that had to be done
7 under a very, very accelerated time frame, and without the
8 support and involvement of Evercore in dealing with the
9 government, helping them in their due diligence effort,
10 providing the financial information and helping the government
11 understand the vast worldwide operations, in our view that
12 transaction would have never occurred in the timely manner that
13 it did occur and thereby avoiding the value erosion, the
14 revenue erosion that would have otherwise occurred had this
15 been -- again, as you noted yourself, Your Honor, in your
16 opinion, a protracted Chapter 11 case. And we believe that
17 Evercore's services over that entire twelve-month period
18 facilitated the expeditious conclusion of the 363 sale, which
19 preserved enormous value for the benefit of stakeholders.

20 And on that basis we believe that the compensation
21 provided for in the order is appropriate. I would point out,
22 Your Honor, that their services were not duplicative of the
23 services rendered by AlixPartners. AlixPartners, as we've
24 indicated in various pleadings, was involved more on the
25 operational side, the cost-saving side, helping the company run

1 the business, and, of course, during their Chapter 11 running
2 Motors Liquidation, the liquidation of the remaining assets,
3 and, again, importantly, Your Honor, the fee structure that was
4 provided for in the Evercore retention letter was agreed to and
5 negotiated with the United States government, the DIP
6 financing, the provider of the DIP financing, and, of course,
7 is contemplated in the wind down budget.

8 And, again, on that basis and, particularly, in view
9 of the fact, Your Honor, that the objections have been resolved
10 and the objecting parties have consented to this order, we
11 would request that the Court approve it.

12 THE COURT: All right. Thank you. I'll permit the
13 creditors' committee, the U.S. Attorney's Office and the U.S.
14 Trustee to be heard if any wishes to.

15 MR. JONES: Thank you, Your Honor. David Jones from
16 the U.S. Attorney's Office, Southern District of New York, for
17 the United States. I won't speak in any length, but I do want
18 just to confirm for the record that the United States has no
19 objection to the retention as described by Mr. Karotkin.

20 THE COURT: Fair enough. Mr. Mayer?

21 MR. MAYER: Thank you, Your Honor. As Mr. Karotkin
22 indicated, the committee originally filed an objection to the
23 Evercore fees, and we come here today having withdrawn that
24 objection. We helped to negotiate a settlement after a
25 considerable process that included numerous rounds of

1 negotiations with Evercore, a presentation by Evercore on
2 September 2 to the committee in which Evercore went into the
3 work that it had done, an analysis by the committee's financial
4 advisor, FTI, of the Evercore fees in comparison to fees by
5 other investment bankers.

6 And the committee comes to the point where it
7 withdraws its objection on the following grounds. First, as we
8 are repeatedly told, to the extent there is cash left over in
9 this estate it does not go to unsecured creditors. It goes
10 back to the government. Therefore, our sole objective with
11 respect to this and other matters that come before the Court
12 involving the payment of monies is to make sure, to the extent
13 we can, that the budget that has been provided for the funding
14 of these estates is sufficient to pay all administrative
15 expense and priority claims such that the equity securities of
16 New GM that have been deposited with Old GM remain available
17 for distribution to unsecured creditors. That is the essence
18 of the deal that Evercore helped the debtors negotiate with the
19 ad hoc committee of bondholders.

20 I pause for the moment to make sure the record is very
21 clear. There are a lot of different bondholder committees that
22 come before this Court. There was a committee of small
23 bondholders that showed up to contest the sale. That's not the
24 committee we're talking about. We're talking about a committee
25 that did not, I believe, appear in the bankruptcy case, but,

1 nonetheless --

2 THE COURT: But that was represented by Paul, Weiss.

3 MR. MAYER: That's correct. The Paul, Weiss committee
4 was the one that cut this deal, and we are stewards at the
5 official committee. We are stewards of the deal that Paul,
6 Weiss cut. And that deal is very simple. We get the
7 securities. The government gets the cash. Now, there is
8 supposed to be enough cash in the estate to pay for the
9 expenses so that unsecured creditors get the securities they've
10 been promised. And we believe that the accommodations reached
11 with Evercore accomplish that goal, and we take some comfort in
12 the U.S. Trustee's ability to reexamine the fees if it turns
13 out that any of these assumptions have proved unwarranted, and
14 on that basis we have withdrawn our objection.

15 THE COURT: Very well. Thank you. Mr. Masumoto?

16 MR. MASUMOTO: Good morning, Your Honor. Brian
17 Masumoto for the Office of the United States Trustee. Your
18 Honor, as indicated by the private counsel this deal was
19 heavily negotiated by various constituencies. Our office had a
20 number of discussions, both with the committee and with the
21 debtor and Evercore, regarding the current modifications to the
22 original retention order, and based upon those modifications we
23 have no objection to the current proposed order.

24 THE COURT: Very well. Folks, I'm ratifying and
25 approving the settlement vis-à-vis the terms of the Evercore

1 retention, and, accordingly, approving the underlying retention
2 and the disbursements in accordance with the understanding you
3 all reached. And the following are the bases for the exercise
4 of my discretion in this regard.

5 Obviously we are talking about a lot of money here,
6 and for that reason I welcomed the dialogue that took place
7 amongst all of you to engage in the due diligence necessary to
8 assure that Evercore provided services commensurate with the
9 fees it would receive and to ensure that unsecured creditors
10 got the benefit of the bargain they had struck, which was to
11 give the estate the administrative solvency it would need to
12 confirm a plan and to give the unsecured creditor community the
13 stock that was such an important element of its entitlement in
14 this case.

15 I had communicated informally with the parties, asking
16 that the services be fleshed out so that I, and the world, if
17 you will, would understand exactly that which was done, and
18 after hearing Mr. Karotkin I feel that my request was taken
19 seriously, was satisfied, and that he provided what I needed to
20 give me comfort that the money was, and would be, duly earned.

21 I also think that the terms that were negotiated by
22 the creditors' committee and by the U.S. Trustee's Office went
23 very far to give me the comfort I needed to ensure that
24 appropriate protections were put in place for the protection of
25 both creditors and the system. And with parties having worked

1 to address my needs and concerns I am now, after what I
2 consider to be appropriate due diligence on my part, in a
3 position to approve the retention, as I said. And I'm going to
4 ask you, Mr. Karotkin, to take the lead with appropriate
5 consultation with the creditors' committee, U.S. Attorney's
6 Office and U.S. Trustee's Office, to the extent that it hasn't
7 already been done, to give me an order in accordance with the
8 understanding that had been struck.

9 MR. KAROTKIN: If Your Honor, please, the order that
10 we have submitted with the notice has been agreed to precisely
11 by the parties and it has. And I have --

12 THE COURT: It has already been --

13 MR. KAROTKIN: Yes, sir.

14 THE COURT: -- fully vetted?

15 MR. KAROTKIN: Fully vetted. We did not submit it
16 until it was fully -- it was not noticed until it was fully
17 vetted and agreed to.

18 THE COURT: Fair enough. Then under those
19 circumstances you or your designee can drop it off in my
20 chambers across the hall as soon as we're done today.

21 MR. KAROTKIN: I have it with me and I will do so.
22 Thank you, sir.

23 THE COURT: All right. Am I correct that we have no
24 further business today?

25 MR. KAROTKIN: That is correct.

1 THE COURT: All right. We're adjourned. Thank you
2 very much.

3 MR. KAROTKIN: Thank you, sir.

4 MR. MAYER: Thank you, Your Honor.

5 (Proceedings concluded at 10:12 AM)

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Granting of Motion 16 24

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Authorizing the Employment
and Retention of Evercore
Group L.L.C.

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2 C E R T I F I C A T I O N

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4 I, Hana Copperman, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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8 HANA COPPERMAN

9 AAERT Certified Electronic Transcriber (CET**D-487)

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16 Date: October 29, 2009

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